

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has paid the filing fee. For the reasons stated below, the court dismisses the complaint for failure to state a claim.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
 2 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
 3 the alleged violation was committed by a person acting under the color of state law. *See West v.*
 4 *Atkins*, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 Plaintiff claims that he was housed at Salinas Valley State Prison in November 2012. On
 7 November 21 and November 22, 2012, plaintiff's cell flooded. The flood appeared to originate
 8 from a chase located between two cells. On December 7, 2012, as plaintiff was getting out of
 9 bed, plaintiff slipped and fell on to the floor because the floor was wet. Plaintiff asserts that his
 10 cell flooded several times in November and December, and although complaints were made to
 11 maintenance, maintenance did not repair the plumbing in a timely manner, and plaintiff ended up
 12 injuring himself by slipping on the wet floor.

13 The Eighth Amendment's prohibition of "cruel and unusual punishments" imposes a duty
 14 on prison officials to, among other things, "take reasonable measures to guarantee the safety of
 15 the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468
 16 U.S. 517, 526-27 (1984)). A prison official violates the Eighth Amendment only when two
 17 requirements are met: (1) the deprivation is, objectively, sufficiently serious; and (2) the prison
 18 official is, subjectively, deliberately indifferent to inmate safety. *See Farmer*, 511 U.S. at 834.
 19 The test for deliberate indifference is the same as criminal recklessness, i.e., the official must
 20 actually know of and disregard an excessive risk to inmate safety. *See id.* at 837. The official
 21 "must both be aware of facts from which the inference could be drawn that a substantial risk of
 22 serious harm exists, and he must also draw the inference." *Id.* Neither negligence nor gross
 23 negligence constitutes deliberate indifference. *See id.* at 835-36 & n.4; *Estelle v. Gamble*, 429
 24 U.S. 97, 106 (1976).

25 Even with liberal construction, the complaint does not state a claim for an Eighth
 26 Amendment violation. Claims regarding slippery floors, without more, "do not state even an
 27 arguable claim for cruel and unusual punishment." *Jackson v. Arizona*, 885 F.2d 639, 641 (9th
 28 Cir. 1989), superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122,

1 1130-31 (9th Cir. 2000); *see, e.g., McLaughlin v. Farries*, No. 03-60771, 2004 WL 2030365 (5th
 2 Cir. Sept. 13, 2004) (per curiam) (unpublished opinion) (concluding that prisoner's slip and fall
 3 on accumulated water from leaky air conditioning unit, which the defendants knew about and
 4 failed to clean up was an appropriate action for negligence, but not deliberate indifference);
 5 *Reynolds v. Powell*, 370 F.3d 1028, 1031 (10th Cir. 2004) (concluding that although prisoner
 6 complained for two months about accumulated water in the shower, and finally sustained injuries
 7 from the slippery floor, "while the standing-water problem was a potentially hazardous
 8 condition, slippery floors constitute a daily risk faced by members of the public at large" and is
 9 not a sufficiently serious risk of constitutional dimension); *Brown v. Basher*, No. 10-0479 MCE
 10 EFB, 2012 WL 639446 (E.D. Cal. Feb. 27, 2012) (granting defendants' motion for summary
 11 judgment against a mobility impaired prisoner who ambulated with a cane and slipped and fell
 12 on puddle, created by a water leak, concluding that even though defendants knew about the
 13 puddle, the claim was one of negligence rather than deliberate indifference); *Gilman v.*
 14 *Woodford*, No. 05-0337, 2006 WL 1049739 (E.D. Cal. April 20, 2006) (granting qualified
 15 immunity to defendants when prisoner slipped and fell in puddle of water resulting from leaking
 16 ceiling, of which defendants knew); *Edwards v. City of New York*, No. 08-5787, 2009 WL
 17 2596595 (S.D.N.Y. Aug. 24, 2009) (courts have held that allegations of wet conditions leading
 18 to a slip-and-fall will not support a Section 1983 claim even where . . . the plaintiff [] alleges that
 19 the individual defendants had notice of the wet condition but failed to address it."); *Vines v.*
 20 *Hepp*, No. 07-956, 2007 WL 3342583 (E.D. Wis. Nov. 8, 2007) (finding accumulated puddles of
 21 water in shower not objectively serious condition sufficient to implicate Eighth Amendment);
 22 *Santiago v. Guarini*, No. 03-4375, 2004 WL 2137822 (E.D. Pa. 2004) (holding toilet and sink
 23 leak in cell, causing slip and fall, did not present substantial risk to inmate's safety, and was not
 24 objectively serious conditions) *Robinson v. Cuyler*, 511 F.Supp. 161, 163 (E.D. Pa. 1981) ("A
 25 slippery kitchen floor does not inflict 'cruel and unusual punishments.'") (citation omitted)).
 26 Instead, to state a cognizable claim for relief, there must be a confluence of exacerbating
 27 conditions such that the slippery floor posed a serious, unavoidable threat to plaintiff's safety.
 28 *See Frost v. Agnos*, 152 F.3d 1124, 1129 (9th Cir. 1998) ("[s]lippery floors without protective

1 measures could create a sufficient danger to warrant relief" when an inmate alleges facts that
 2 exacerbate the danger resulting from such conditions); *Osolinski v. Kane*, 92 F.3d 934, 938 (9th
 3 Cir. 1996) (a single, minor safety hazard does not violate the Eighth Amendment but allegations
 4 of conditions which "exacerbate[] the inherent dangerousness of already-existing hazards" or
 5 "render[] [an inmate] unable to provide for his own safety" are sufficient to state a cognizable
 6 claim for relief (internal quotations, brackets and citation omitted)).

7 Here, plaintiff states that his cell flooded several times in November and December 2012.
 8 Defendants informed the inmates that requests for work orders had been placed, and in the
 9 meantime, defendants allowed inmates out of their cells so that the water could be pushed out of
 10 the cells on several occasions. Plaintiff alleges no other facts or exacerbating circumstances that
 11 could elevate this simple negligence claim into a federal cause of action. Plaintiff's claim
 12 against defendants therefore does not state a constitutional violation. *See, e.g., Aaronian v.*
 13 *Fresno County Jail*, No. 10-0518 JLT (PC), 2010 WL 5232969 at *2-*3 (E.D. Cal. 2010)
 14 (allegation that plumbing leak caused pool of water resulting in plaintiff slipping and falling does
 15 not raise cognizable conditions of confinement claim); *Wallace v. Haythorne*, No. 06-1697 MCE
 16 GGH P, 2007 WL 3010755, at *2-*4 (E.D. Cal. 2007) (finding no Eighth Amendment violation
 17 when prisoner fell after his foot slipped into a hole in the floor caused by a missing tile, even if
 18 defendants were aware that a non-prisoner employee had previously tripped on one of the holes)

19 District courts must afford pro se prisoner litigants an opportunity to amend to correct
 20 any deficiency in their complaints. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
 21 (en banc). However, leave need not be granted where the amendment of the complaint would
 22 cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in
 23 futility, or creates undue delay. *See Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir.
 24 1994); *see also Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (recognizing that leave
 25 to amend is not necessary when plaintiff can provide no set of facts in support of his claim that
 26 would entitle him to relief) (citations and internal quotation marks omitted). Here, leave to
 27 amend will not be granted because the complaint well describes the incident, and it simply does
 28 not amount to deliberate indifference to a risk to the inmate's safety. This is not to say that the

1 inmate was not hurt, as his allegations imply that he was. Rather, as *Osolinski*, 92 F.3d at 936-
2 37, observed, not every injury translates into constitutional liability for prison officials. This is
3 such a case.

4 **CONCLUSION**

5 Plaintiff's complaint is DISMISSED with prejudice for failure to state a claim.

6 IT IS SO ORDERED.

7 DATED: 3/24/14



8 LUCY H. KOH
United States District Judge

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